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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,364	10/07/2003	Charles A. Miller	RWZ/78U	4643
26875	7590	11/24/2006	<input type="text"/>	EXAMINER
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			<input type="text"/>	KUMAR, RAKESH
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/680,364	MILLER, CHARLES A.
	Examiner Rakesh Kumar	Art Unit 3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 September 2006.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-78 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-78 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 07 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Priority***

1. The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application). The disclosure of the invention in the parent application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See *Transco Products, Inc. v. Performance Contracting, Inc.*, 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994).

The disclosure of the prior-filed application, Application No. 60/424,616 fails to provide adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for one or more claims of this application. The above priority Application does not provide support for selected claims of this application.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3,6-10,14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Chesson et al. (U.S. Patent No. 5,577,612)

4. Referring to claims 1, 2 and 6. Chesson discloses a dispenser carton (Figure 3 and 4) for containing a plurality of articles comprising:

a plurality of walls including a bottom wall (518) spaced from a top wall (511), a pair of spaced side walls (514, 516) and a pair of spaced end walls (528, 536), the side (514, 516) and end walls (528, 536), extending between the top (511) and bottom walls (518);

a plurality of flaps (532 and 526) extending from at least some of the walls (514 and 518), the end walls (528 and 536) being formed by combination of the flaps (when flaps 532, 513, 530, 531 and 526 are folded to make the end walls of the dispenser see Figure 4);

a corner of the carton formed by one of the end walls (536) and either the top wall (511) or the bottom wall (518); and

a dispenser portion (534) for dispensing articles from the carton, the dispenser portion of the carton being formed from more than one of the flaps (flaps 513, 531 and 522 see Figure 6) and at least in part from the corner (end wall and the top wall) to define a dispenser opening for exposing an article for removal from the carton (see Figure 6);

wherein the dispenser portion (534) does not include either of the side walls (514, 516).

5. Referring to claims 3 and 18. Chesson discloses a dispenser carton (Figure 3 and 4) wherein the dispenser portion (534) is hingedly (580) attached to the top wall (510).
6. Referring to claims 7 and 8. Chesson discloses a dispenser carton (Figure 3 and 4) wherein at least one retaining panel (531,513; Figure 3) adjacent the dispenser opening (334) to retain the remaining articles in the carton.
7. Referring to claim 9. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a height of the at least one retaining panel (531,513; Figure 3) is over half of the height of the one end wall (528, 536).
8. Referring to claim 10. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a width of the at least one retaining (531,513; Figure 3) panel is less than half of the width of the one end wall (528, 536).
9. Referring to claims 14 and 15. Chesson discloses a dispenser carton (Figure 3 and 4) wherein a pair of spaced tear lines (586, 588) each extending through the one end wall (536) and each tear line extends to the top wall (534).

Art Unit: 3654

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson et al. (U.S. Patent No. 5,577,612) in view of Montealegre (U.S. Patent Number 4,340,170).

12. Referring to claims 4 and 5. Chesson discloses all the claimed features in addition to a tab edge (547; Figure 3) disposed on the bottom corner of the container to provide for easy in lifting the dispenser portion (534), but does not teach of a finger hole located on the bottom corner.

However, Montealegre discloses a finger aperture (102; Figure 4) used to lift a embedded strap (92) formed on the cover.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the teaching of Chesson and include a figure aperture as taught Montealegre and position the aperture at the leading edge of the dispenser portion near the bottom corner of the container to provide for easy lifting of the dispenser portion.

13. Claims 11 and 19-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson et al. (U.S. Patent No. 5,577,612) in view of Carroll (U.S. Patent Number 5,921,398)

14. Referring to claims 11 and 19-78. See claim rejection above. Chesson discloses all the claimed features, but does not teach the dispenser opening extending the entire height of the one end wall.

However, Carroll discloses a dispenser opening extending the entire height of the one end wall (see height of member 18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson and extend the dispenser opening to be the entire height of the end walls as taught by Carroll because a larger opening would provide a greater access to the articles within the container.

Regarding claims 19-21 and 25 see Office paragraph 8.

Regarding claims 22,36, see Office paragraph 9.

Regarding claims 23,24, see Office paragraph 16.

Regarding claims 26,27, see Office paragraph 10.

Regarding claims 28,38, see Office paragraph 11.

Regarding claims 29,39, see Office paragraph 12.

Regarding claims 30,40, see Office paragraph 20.

Regarding claims 31,41, see Office paragraph 22.

Regarding claims 32,33, see Office paragraph 13.

Regarding claims 34,35, see Office paragraph 23.

Regarding claims 37, see Office paragraphs 8-10,16 and 18.

Regarding claim 42, see Office paragraphs 13 and 23.

Regarding claim 43-64 and 66-78, see Office Action above.

Regarding claim 65. Regarding method claim 65, although Chesson in view of Montealegue do not explicitly disclose a method of using their apparatus, the method steps recited in the claims would inherently be performed when using the apparatus of Chesson in view of Montealegue in its usual and expected fashion.

15. Claim 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson et al. (U.S. Patent No. 5,577,612) in view of Lavery (U.S. Patent Number 4,974,771)

16. Referring to claim 12. Chesson discloses all the claimed features, but does not teach a handle opening disposed in the top wall.

Lavery discloses a handle opening (see opening between perforation lines 66 and 72; Figure 1) in the top wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson and includes a handle as taught by Lavery because it would make carrying the container easier.

17. Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Chesson et al. (U.S. Patent No. 5,577,612) in view of Matsumura (U.S. Patent Number 5,690,213).

18. Referring to claim 13. Chesson discloses all the claimed features, but does not teach the dispenser portion being adapted to be releasably inserted into the handle opening.

Matsumura discloses a display carton (Figure 1) wherein a dispenser portion (13) is incorporated with a tab (29) to be releasably inserted into slot (30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson to have included the teaching of Matsumura and insert the dispenser portion of Chesson into a slot disposed on top of the container that can further be used as a handle because it would allow the dispenser portion tab to be secured.

19. Referring to claims 16 and 17. Chesson discloses all the claimed features, but does not teach of the tear lines extending along a juncture between the top and side wall.

Carrel discloses a dispensing carton wherein each tear line (58, 60) extends along a juncture between the top wall and one of the side walls(54, 56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Chesson and align the tear lines (582, 584) of Chesson such they extend along a juncture between the top and the side walls as taught by Carrell, because the dispenser opening would be larger and the articles would not catch the sides when being removed from the container.

Regarding claim 17 the fold line of Chesson extend through the top panel (511) and join the tear lines (584, 582; Figure 3).

#### ***Response to Arguments***

20. Applicant's arguments filed 09/08/2006 have been fully considered but they are not persuasive. See rejections above.

21. The applicant states claims 15-17 and 66-78 were not specifically rejected in the Office Action filed 05/17/2006 thus believes the subject matter to be in condition for allowance. The Office directs the applicant's attention to paragraph number 13 stating rejection for claim 15, paragraph number 23 for rejection pertaining to claims 16 and 17 and paragraph 18 for rejections pertaining to claims 66-78.

The Applicant argues on page 26 (Remarks) distinctive difference in the Applicants embodiment over the cited art of Chesson in the Office, however the claimed limitations do not recite the structure as argued, thus amended claims do not traverse the prior art rejections, see modified rejection above.

Referring to claims 1, 19, 37, 43, 55 and 63, Applicant argues “the dispenser portion is formed from more than one of the flaps.” As stated in the rejection above, the dispensing portion as taught by Chesson (see Figure 6; Chesson in view of Figure 3) is formed from more than one of the flaps.

Referring to claim 65, Applicant argues the dispenser is formed by “portions of more than one of the flaps.” In the view of the Office the dispenser of Chesson is formed by portions of more than one of the flaps.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

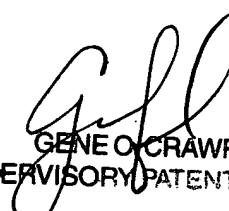
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK  
November 10, 2006

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER